

and are set forth in Nevada Bell's tariffs. End users may complete local calls within an EAD without incurring a toll charge.' Nevada Bell has a very large EAD area in Reno, Sparks, Carson City and surrounding communities. For example, EAD No.1 includes the communities of Reno, Sparks, Carson City, Washoe Valley, Incline Village/Crystal Bay, Virginia City, Verdi, Tracy, Spanish Springs, Stead, Sun Valley, Lockwood, and Dayton.<sup>6</sup> A customer of Nevada Bell located in Reno (or the customer of a CLEC that interconnects with Nevada Bell in Reno) can reach or be reached by 86 percent of Nevada Bell's access lines without the calling or called parties incurring toll charges.<sup>7</sup>

56. The Commission has designated Nevada Bell as the "provider of last resort of basic services" within its service area.<sup>8</sup> As such, the Company must provide service to all present and future customers within its service area. Nevada Bell's basic service local exchange rates are capped under the current form of alternative regulation.<sup>9</sup> Nevada Bell's territory-wide flat rate for residential service is \$10.75 a month. The territory-wide flat rate per business access line is \$22 a month.<sup>10</sup> Through joint serving arrangements with other incumbent local exchange carriers ("ILECs"), Nevada Bell provides intraLATA long distance services in all 17 counties of the state. The Commission has designated Nevada Bell as the provider of last resort of basic service for intrastate interexchange toll services within the Northern Nevada Local Area of Transport and Access ("LATA"), designated as LATA 720. Although customers are free to choose any long distance carrier for their calls, Nevada Bell is obliged to provide intraLATA long distance services to any customer within the Company's service area.

57. Many of Nevada's citizens already enjoy the benefits of competition in both the local and long-distance markets. Importantly, in Las Vegas where most Nevadans reside, the incumbent Central Telephone Company – Nevada, d/b/a Sprint of Nevada ("Sprint") offers both

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P.U.C.N. Tariff A 5 § 5.1.2

Id.

<sup>8</sup> This is based on a call being placed to or from any of the communities listed within **EAD 1, 2 or 7**. See id.  
See NIV. ADMIN. CODE § 704.6802.

<sup>10</sup> See NEV. ADMIN. CODE §§ 704.68474-68498; see also NEV. REV. STAT. §§ 704.68904-68984.  
See P.U.C.N. Tariff No. **A.5** § 5.2.4.

local and long distance services." This proceeding represents more than eight years of effort by the Commission, the Staff, the BCP, competitive providers, and Nevada Bell working through a process involving both collaborative and contested proceedings to bring the benefits of further competition to Nevada Bell's customers."

**B. Commission proceedings implementing the Act**

1. UNE recurring pricing proceedings<sup>13</sup>

58. On September 27, 1996, Staff filed a petition with the Commission, designated as Docket No. 96-9035. The Staff requested an investigation into the procedures and methodologies that should be used to develop costs for bundled and unbundled telephone services or service elements and to determine whether the cost methodology and pricing standards proposed by ILECs satisfied the Act's pricing requirements.

59. During 1997, the Commission conducted proceedings and evidentiary hearings in Docket No. 96-9035. Nevada Bell filed econometric telecommunication network models and studies documenting Nevada Bell's actual forward-looking costs for bundled and unbundled telephone services and service elements. Other parties participating in these proceedings, notably AT&T, submitted an alternative type of econometric telecommunication network model - the Hatfield Model. The Commission conducted an evidentiary hearing on these competing econometric telecommunication network models and cost studies in June 1997.

60. On October 30, 1997, the Commission issued the first of several orders in Docket No. 96-9035. The Commission's October 30, 1997, order addressed the procedures and methods for developing wholesale discounts on bundled telephone services, also known as wholesale costs or prices.

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*Sprint is not a Bell Operating Company ("BOC") and, therefore, free to originate interLATA calls from Las Vegas*

<sup>12</sup> See Section II(B) *infra* at; see generally Exhibit 22, Redmon Direct Testimony.

<sup>13</sup> See generally Exhibit 22, Redmon Direct Testimony ¶¶ 36 & 41-49; see Procedural Order No. 3, *Petition of Nevada Bell Telephone Company for an Order Commencing a Proceeding to Determine New Costs and Rates for Unbundled Network Elements*, P.U.C.N. Docket 00-7012 (iss. July 29, 2002). On October 25, 2000, the Commission took administrative of the following proceedings: P.U.C.N. Docket No. 96-9035, P.U.C.N. Docket No. 98-6004, and 00-7012. See *Transcript of Proceedings*, Vol. 2 at 210 (taking notice of the outcome of Docket No. 96-9035 and Docket No. 98-6004, which outcome includes the subsequent proceedings in Docket No. 00-7012).

61. On December 11, 1997, the Commission issued its second order in Docket No. 96-9035. This order addressed the cost concepts and model for developing costs for unbundled network elements ("UNEs"). The Commission adopted the Hatfield Model, Version 3.1. (the "Hatfield Model"), as the model platform for developing UNE costs in Nevada. The Commission concluded that additional proceedings were necessary so that the information produced by the Hatfield Model accurately reflected the specifics of the Nevada marketplace.

62. On February 5, 1998, the Commission issued its third order in Docket No. 96-9035; regarding additional issues in developing UNE cost studies. On March 5, 1998, the Commission issued an order in Docket No. 96-9035 finding it appropriate to analyze Nevada-specific UNE costs using the Hatfield Model and addressing algorithm platform changes to be made for UNE costing purposes. The Commission's March 5, 1998, order also established a procedural schedule requiring Nevada Bell and other non-rural ILECs to prepare and file cost studies related to the Nevada specific cost inputs for use in the Hatfield Model.

63. On April 17, 1998, the Commission designated the Hatfield Model sponsored by AT&T as the Nevada HAI 5.0 Model Modified (the "Nevada HAI Model"). The Commission adopted this model platform as the model to determine UNE costs in Nevada. On June 1, 1998, Nevada Bell filed with the Commission a UNE input cost study (the "UNE Input Cost Study"), a cost study for remote access to operational support systems (the "OSS Cost Study"), and a UNE nonrecurring cost study (the "UNENRC Study"), each in accordance with the Commission's Amended Procedural Order in Docket No. 96-9035. On June 8, 1998, the Commission issued a Notice of Filing and Rehearing Conference providing that the proceedings in Docket No. 96-9035 would be divided into separate dockets for each non-rural ILEC. Nevada Bell's UNE Cost Input Study, OSS Cost Study and UNE NRC Study were thereafter designated by the Commission as Docket No. 98-6004. Similarly, the UNE input cost study and other cost studies filed by Sprint were designated by the Commission as Docket 98-6005.

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64. From August 10, 1998, to September 11, 1998, the Commission conducted evidentiary hearings in Docket No. 98-6004. On February 1, 1999, the PUCN rendered a decision and issued an order in Docket Number 98-6004 that established prices for incorporation into all of Nevada Bell's interconnection agreements (the "Pricing Order"). The Pricing Order was subsequently modified in certain respects by the Commission in an order (the "Modified Pricing Order"), on May 11, 1999.

65. On May 3, 1999, Nevada Bell filed a petition with the First Judicial District Court of the State of Nevada (the "State Petition"), for the judicial review of certain provisions of the Pricing Order (the "State Petition Litigation"). The State Petition Litigation was designated as Nevada Bell v. State of Nevada, Case No. 99-00601A (1st Jud. Dist. Ct. Nev. filed May 3, 1999). The State Petition Litigation was removed to Federal Court pursuant to the Notice of Removal filed by AT&T on July 2, 1999.

66. On July 14, 1999, the Federal Court entered an order approving the stipulation of the parties concerning certain procedural matters, including the agreement of the parties to removal of the State Petition Litigation to the Federal Court. On July 19, 2000, the Federal Court approved a settlement of the State Petition Litigation. The settlement agreement provided for Nevada Bell to file a petition with the Commission initiating a reexamination of UNE rates. The Commission opened Docket No. 00-7012 to reexamine UNE costing and pricing models as well as to determine the appropriate costs and prices of UNEs. While Docket No. 00-7012 is pending, the UNE recurring prices established by the Commission using the Nevada HAI model remain in place.

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z. UNE nonrecurring pricing proceeding<sup>14</sup>

67. On December 15, 1999, Nevada Bell filed an unbundled network elements nonrecurring cost study ("UNE nonrecurring study"). The Commission designated the filing as Docket No. 99-12033. On the same day AT&T filed a UNE nonrecurring cost study, which cost study the Commission designated as Docket No. 99-12034. In April, Nevada Bell filed a Petition for Review and Approval of a Cost Study and Proposed Rates for Conditioning Digital Subscriber Line Loops, which was designated as Docket No. 00-4001. The Commission consolidated Docket Nos. 00-4001, 99-12034, and 99-12033 on June 5, 2000.

68. After Nevada Bell filed testimony in the consolidated proceeding, the parties to that proceeding began settlement discussions. The majority of the UNE nonrecurring rates were resolved by a settlement stipulation among the parties, including many of the competitive providers participating in this proceeding. Those non-recurring rates, which were based on the results of proceedings before the California Commission, were approved by the Commission and incorporated into Nevada Bell's generic and other interconnection agreements.

3 Collocation pricing proceeding<sup>15</sup>

69. On November 18, 1990, Staff filed a petition with the Commission, designated as Docket No. 99-11035. The Commission opened an investigation to examine the procedures and methodology for developing costs and prices for collocation of telecommunications services pursuant to the Act and the Commission's regulations. During the summer of 2000, the parties

<sup>14</sup> See generally Exhibit 22, Redmon Direct Testimony ¶ 50; see also Exhibit 8, Rebuttal Testimony of Terry J. Redmon ("Redmon Rebuttal Testimony"), Order, In re filing by Nevada Bell of its Unbundled Network Element (UNE) Nonrecurring Cost Study pursuant to the order issued in Docket No. 98-6004, P.U.C.N. Docket No. 99-12033; In re filing by AT&T Communications of Nevada, Inc. of its Nonrecurring Cost Study for Unbundled Network Elements (UNE) purchased from Nevada Bell pursuant to the Order issued in Docket No. 98-0004, P.U.C.N. Docket No. 99-12034, In re petition of Nevada Bell for review and approval of its cost study and proposed rates for conditioning Digital Subscriber Line (DSL) Loops, P.U.C.N. Docket No. 00-4001 (consolidated) (rel. October 4, 2000); see also Transcript of Proceedings, Col. 8 at 1173 (Nov. 1, 2000).

<sup>15</sup> See Notice of Petition, In re petition of the Staff of the Public Utilities Commission to open a docket to investigate costing and pricing issues related to industry-wide collocation costs pursuant to the Telecommunications Act of 1996 and the Commission's Regulations, P.U.C.N. Docket No. 99-11035 (iss. May 25, 2000); Order, In re petition of the Staff of the Public Utilities Commission to open a docket to investigate costing and pricing issues related to industry-wide collocation costs pursuant to the Telecommunications Act of 1996 and the Commission's Regulations, P.U.C.N. Docket No. 99-11035 (iss. Nov. 11, 2001), Attachment 1 (Settlement Stipulation) at 8.

conducted workshops regarding the procedures and collocation costing and pricing methodology. In November and December, 2000, Nevada Bell filed its cost model and supporting testimony. AT&T and WorldCom submitted a cost model and testimony advocating the use of their competing cost models to set collocation rates for Nevada Bell.<sup>16</sup> During the spring of 2001, the parties conducted discovery regarding the competing cost models, and during the summer and fall of 2001, the parties engaged in settlement negotiations.

70. Through these settlement negotiations, which followed a formula similar to the one used by Nevada Bell's sister BOCs in Oklahoma, Missouri and Arkansas, the parties ultimately reached agreement on final collocation rates for Nevada Bell. In the parties' words, these are within the range of what a reasonable application of the Total Element Long Run Incremental Cost ("TELRIC") methodology will produce consistent with the pricing standards set forth in Section 252(d)(1) of the Act. On November 11, 2001, the Commission approved these rates for incorporation into the Company's Collocation Tariff.

#### 4. Collocation tariff proceeding<sup>17</sup>

71. Nevada Bell has established collocation offerings that satisfy Sections 271 and 251 of the Act. The Commission reviewed and approved Nevada Bell's physical and virtual collocation tariff. The shared, cageless and adjacent collocations options available in the approved tariff satisfy the collocation requirements contained in the Advanced Services Order and the Advanced Services Reconsideration Order." In addition, as explained above, the Commission has

<sup>16</sup> WorldCom subsequently announced that it was adopting and sponsoring the testimony and cost study previously filed by AT&T for Nevada Bell in this proceeding.

<sup>17</sup> See generally Exhibit 4, Direct Testimony of Curtis L. Hopfinger and Draft Affidavit ¶¶ 25 – 64 ("Hopfinger Direct Testimony"); Exhibit 69, Rebuttal Testimony of Curtis L. Hopfinger at 25 – 39 ("Hopfinger Rebuttal Testimony"); see also Advice Letter 1835, Filing of Nevada Bell Telephone Company of Revisions to Tariff P.U.C.N. No. C19 to add physical and virtual collocation as part of its access service tariff (Advice Letter 1835), P.U.C.N. Docket 99-7006 (filed July 7, 2000); Order, Filing of Nevada Bell Telephone Company of Revisions to Tariff P.U.C.N. No. C19 to add physical and virtual collocation as part of its access service tariff (Advice Letter 1835), P.U.C.N. Docket 99-7006 (iss. Jan. 4, 2001); Rebuttal Testimony of Matthew Adams, Filing of Nevada Bell Telephone Company of Revisions to Tariff P.U.C.N. No. C19 to add physical and virtual collocation as part of its access service tariff (Advice Letter 1835), P.U.C.N. Docket 99-7006 (filed Dec. 5, 2000).

<sup>18</sup> See First Report and Order and Further Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, 14 FCC Rcd 4761 (rel. March 18, 1999) ("Advanced Services Order"); Deployment of Wireline Services Offering Advanced Telecommunications

reviewed and approved TELRIC-cost studies establishing permanent cost-based rates for Nevada Bell's collocation offerings. The Staff, BCP and CLECs all agreed that those rates were consistent with the TELRIC methodology required by the pricing standards of Section 252(d)(1) of the Act.<sup>19</sup> These TELRTC collocation rates have been incorporated into the tariff."

72. On July 7, 2000, Nevada Bell submitted the Physical and Virtual Collocation Tariff (the "Collocation Tariff") to the Commission for approval. Because the Commission was conducting a separate collocation cost proceeding, Nevada Bell requested approval only of the terms and conditions in the Collocation Tariff. The Collocation Tariff expressly indicated that the rates or prices therein were interim and subject to a true up pending a final order of the Commission in the collocation cost proceeding.<sup>21</sup>

73. During November and December, 2001, the parties filed written testimony and the Commission conducted a contested hearing. In that proceeding, Nevada Bell explained, and the Commission subsequently confirmed, that the Collocation Tariff complies fully with the Advanced Services Order and the Advanced Services Reconsideration Order, including provisions for caged, cageless, shared caged, and adjacent space collocation; space availability; types of equipment that may be collocated; and provisions for obtaining other collocation arrangements that have been demonstrated to be technically feasible. On January 4, 2002, the Commission issued its order approving the Collocation Tariff, subject to certain modifications specified in the order.

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Capability, CC Docket No. 98-147, 15 FCC Rcd 17806 (rel. Aug. 10, 2000) ("Advanced Services Reconsideration Order").

<sup>19</sup> See Order, In re petition of the Staff of Public Utilities Commission to open a docket to investigate Costing and pricing issues related to industry-wide Collocation costs pursuant to the Telecommunications Act of 1996 and the Commission's Regulations, P.U.C.N. Docket 99-11035 (iss. Nov. 11, 2001), Attachment I (Settlement Stipulation) at 8.

<sup>20</sup> See P.U.C.N. Tariff C18-A §§ 19.22.1, 19.36, and 19.42.

<sup>21</sup> Each pricing page of the proposed collocation tariff included the following provision:  
The prices set forth in this tariff are interim and subject to true-up on the final order of the Public Utilities Commission of Nevada in Docket No. 99-11035. In the event the Commission adopts higher prices in Docket No. 99-11035, Nevada Bell will not back bill; in the event the Commission adopts lower prices, Nevada Bell will true-up and refund overpayments.  
Nevada Bell P.U.C.N. Tariff C19 (superceded).

## 5. Performance measurement plan proceedings<sup>22</sup>

74. Nevada Bell's performance monitoring and enforcement mechanisms are the product of an extensive collaborative process. The process, which has taken several years and involved a number of proceedings, has enabled all interested parties to develop and modify these mechanisms. Nevada Bell, the Staff, BCP and the CLECs have all participated in the many proceedings before the Commission, beginning with the Commission's own investigation of performance standards and assessment. The Commission further refined the process of reviewing and refining such performance standards by adopting formal regulations for the review and approval of ILEC performance and incentive plans. These regulations also implement an annual review process.

75. Nevada Bell's Performance Measurements Plan ("PMP") and Performance Incentives Plan ("PIP" and together with the PMP, the "PM&IP") represent the culmination of the Commission's investigatory, rulemaking and annual review proceedings. In the sections that follow, we describe those three types of proceedings.

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<sup>22</sup> See generally Exhibit 140, Pre-filed Direct Testimony of Gwen S. Johnson and Terry C. Gleason and Draft Joint Affidavit ¶¶ 1 & 12-17 ("Johnson/Gleason Direct Testimony"); Exhibit 141, Supplemental Direct Testimony of Gwen S. Johnson ("Johnson Supplemental Direct"); Stipulation of Parties, Commission investigation into procedure and methods necessary to determine whether interconnection, unbundled access and resale services provided by incumbent local exchange carriers are at least equal in quality to that provided by the local exchange carrier to itself or any subsidiary, affiliate or any other party, P.U.C.N. Docket No. 97-9022 (filed Feb. 11, 1999); Further Stipulation Regarding Remaining Nevada Bell Performance Measurements, Commission investigation into procedure and methods necessary to determine whether interconnection, unbundled access and resale services provided by incumbent local exchange carriers are at least equal in quality to that provided by the local exchange carrier to itself or any subsidiary, affiliate or any other party, P. U. C. N. Docket No. 97-9022 (filed May 26, 1999); Procedural Order, Commission investigation into procedure and methods necessary to determine whether interconnection, unbundled access and resale services provided by incumbent local exchange carriers are at least equal in quality to that provided by the local exchange carrier to itself or any subsidiary, affiliate or any other party, P.U.C.N. Docket No. 97-9022 (iss. Sept. 2, 1998); See Notice Of Intent To Adopt Regulations Notice Of Workshop Request For Comments (Telecommunications Services - Performance Standards, Penalties And Procedures), Petition of the Staff of the Public Utilities Commission and the Bureau of Consumer Protection to adopt regulations regarding performance standards and penalties for the provision of local telecommunications services and expedited procedures for complaints between telecommunications providers arising under NRS 703 or 704, P.U.C.N. Docket No. 99-11019 (iss. Feb. 16, 2000); See Order On Reconsideration, Petition of the Staff of the Public Utilities Commission and the Bureau of Consumer Protection to adopt regulations regarding performance standards and penalties for the provision of local telecommunications services and expedited procedures for complaints between telecommunications providers arising under NRS 703 or 704, P.U.C.N. Docket No. 99-11019 (iss. Jan. 18, 2001).



a. The Commission's investigatory proceedings

76. AT&T first raised the issue of a performance monitoring and enforcement mechanism for Nevada Bell shortly after the passage of the Act, in connection with the arbitration of AT&T's Interconnection agreement.” In its arbitration order, the Commission recognized the importance of such a mechanism to “insure that there is fair and effective competition in the local exchange market in Nevada.”” In the arbitration order, the Commission thus ordered the opening of an investigatory docket to “review and evaluate Performance Standards for ILECs.”<sup>23</sup> Subsequently, on September 24, 1997, the Commission opened such an investigatory docket, designated as Docket No. 97-9022, to examine the issue of performance standards in interconnection, unbundled access, and resale services.

77. During 1998, the Commission requested comments from the parties, and sponsored workshops addressing many issues including performance measures, reporting, comparative analogs, benchmarks, statistical tests, audits and incentives in Docket No. 97-9022. Over several months, the parties met to discuss and resolve open issues. **As** a result, by the first half of 1999, the parties were successful in resolving almost all of the open issues with respect to performance measurements.

78. These proceedings – including Commission hearings on the remaining open issues – led to the Commission's issuance of an interim decision on June 23, 1999, requiring Nevada Bell to “file its performance measurements standards in one document, which incorporates Commission ordered performance measurements and all relevant stipulations.”” In compliance with that order, Nevada Bell filed its performance measurement plan on March 8, 2000. During

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<sup>23</sup> Petition for Arbitration, Petition of AT&T Communications of Nevada Inc. for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Nevada Bell, P.U.C.N. Docket 97-5014 (filed May 9, 1997).

<sup>24</sup> Arbitration Order, Petition of AT&T Communications of Nevada Inc. for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Nevada Bell, P.U.C.N. Docket 97-5014 ¶ 81 (iss. Aug. 28, 1997).

<sup>25</sup> Id.

<sup>26</sup> Interim Order, Commission investigation into procedure and methods necessary to determine whether interconnection, unbundled access and resale services provided by incumbent local exchange carriers are at least equal in quality to that provided by the local exchange carrier to itself or any subsidiary, affiliate or any other party, Docket No. 97-9022 (iss. June 23, 1999).

the year 2000, certain parties continued to meet informally in a collaborative fashion to refine Nevada Bell's performance measurements. Those collaborative meetings resulted in a final stipulation that was filed with the Commission in March, 2001

b. The Commission's rulemaking proceedings

79. When Docket 97-9022 commenced, the Commission did not have specific statutory authority to adopt performance measures or self-executing remedies. In May, 1999, the Nevada Legislature approved Senate Bill 440 ("SB 440"). Section 23 of SB 440, which has been codified at NRS 704.281, expressly directs the Commission to adopt performance measurement plans and self-executing incentive mechanisms. NRS 704.281 provides:

The commission shall, by regulation:

1. Establish standards of performance and reporting regarding the provision of interconnection, unbundled network elements and resold services, which encourage competition and discourage discriminatory conduct in the provision of local telecommunication services; and

2. Notwithstanding the provisions of NRS 703.320 to the contrary, establish penalties and expedited procedures for imposing penalties upon a provider of telecommunication services for actions that are inconsistent with the standards established by the commission pursuant to subsection 1. Such penalties may include financial payment to the complaining provider of telecommunication services for a violation of the standards established by the commission pursuant to subsection 1, provided that any penalty paid must be deducted, with interest, from any other award under any other judicial or administrative procedure for the same conduct in the same reporting period. Any penalty imposed pursuant to this subsection is in lieu of the civil penalties set forth in NRS 703.380 and must be:

- (a) Imposed for violating a standard or standards established by regulations of the commission pursuant to subsection 1;

- (b) Determined by the commission to further the goal of encouraging competition or discouraging discriminatory conduct; and

- (c) In an amount reasonable to encourage competition or discourage discriminatory conduct.

80. In February, 2000, the Commission opened Docket No. 99-11019 (the "Performance Measurements Rulemaking Proceeding") to adopt regulations implementing NRS 704.281. On January 18, 2001, the Commission issued a final order, adopting permanent regulations

implementing NRS 704.281 (the "Performance Measures Regulation"). The Performance Measures Regulation, which was subsequently codified at Sections 704.6803 through 680365 of the NAC, details the elements that must be contained in the performance measurement and incentive plans filed annually<sup>27</sup> by certain non-rural ILECs. Following the adoption of this regulation, the Commission issued an order closing the Performance Standards Investigatory Docket.<sup>28</sup>

c. The Commission's annual review proceedings

81. On January 31, 2001, Nevada Bell filed its petition for the review and approval of the PM&IP. Nevada Bell used as a baseline document the PMP that Nevada Bell had filed in Docket No. 97-9022, which embodied all the refinements, modifications and supplements that had been negotiated or ordered by the Commission in those proceedings.<sup>29</sup> The Commission designated Nevada Bell's 2001 PM&IP annual review filing as Docket No. 01-1048.

82. After Staff, BCP and the participating CLECs each filed written testimony in Docket No. 01-1048, the parties reached a negotiated agreement – again stipulating to many if not most of the contested issues concerning the PM&IP, and providing a procedural schedule for Commission determination of five specified open issues concerning the application of the PMP or PIP.<sup>30</sup> As the result of further discussions between the parties, three of these open issues were also resolved by stipulations filed with the Commission.<sup>31</sup> The August 2001 stipulation left open

<sup>27</sup> Pursuant to a change to NAC 704.680303 on October 24, 2002, the PM&IP is now reviewed every three years.

<sup>28</sup> On March 23, 2001, Nevada Bell filed a Partial Party Stipulation entered into by Nevada Bell, AT&T and WorldCom regarding the Nevada Bell 2001 Baseline Performance Measurements Plan ("Plan"). The Stipulating Parties represented that pursuant to the regulations adopted by the Commission in Docket No. 99-11019, any further refinements, modifications or supplements to the Plan would be considered by the Commission in Docket No. 01-1048, and not in Docket No. 97-9022. The Stipulating Parties further state that the Partial Party Stipulation was not intended to affect the rights of any parties in the proceedings in Docket No. 01-1048. Accordingly, the Stipulating Parties requested that the Commission close and archive Docket No. 97-9022.

<sup>29</sup> That stipulation, including the parties' request to close Docket No. 97-9022, was approved by Commission order in May 2001. See Order, Commission investigation into procedures and methods necessary to determine whether interconnection, unbundled access, and resale services provided by incumbent local exchange carriers are at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party, P.U.C.N. Docket No. 97-9022 (iss. May 15, 2001).

<sup>30</sup> The CLECs identified a sixth issue concerning the proper allocation between the CLECs of their portion of the costs associated with audits of Nevada Bell's reporting procedures and reportable data. The CLECs have conceded that this issue is a CLEC concern that does not involve Nevada Bell.

<sup>31</sup> See Stipulation and Joint Motion, Filing of Nevada Bell Telephone Company for approval of its plan for the reporting and auditing of performance measures and a plan for establishing performance incentives, P.U.C.N.

the Tier II component.<sup>32</sup> Subsequently, in May 2002, the Commission approved the Tier II component of Nevada Bell's 2001 PM&IP, pursuant to a supplemental stipulation of the parties."

83. On January 31, 2002, the Commission commenced its annual review and approval of the Nevada Bell 2002 PM&IP, as required by the Performance Measures Regulation. Nevada Bell proposed certain changes from the 2001 PM&IP that was approved by the Commission in 2001,<sup>34</sup> which primarily consisted of grammatical and editorial changes and clarification of payment eligibility requirements." The parties in the 2002 review proceeding (Nevada Bell, WorldCom, Staff and BCP), reached an agreement regarding all changes, which included clarifying certain business rules, establishing certain previously undefined submeasure standards, and formalizing certain reporting requirements.<sup>36</sup> These changes, which included the grammatical and editorial changes and clarification of payment eligibility requirements which

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Docket So 01-1048 (filed Oct. 19, 2001) (agreeing to performance standards for xDSL capable loops submeasures and a severity component): see also Stipulation of the Parties Regarding a Proposal to Assess Cycle Time and Completeness of an Acknowledgement that a Request for Service has Been Received, Filing of Nevada Bell Telephone Company for Approval of its Plan for the Reporting and Auditing of Performance Measures and a Plan for Establishing Performance Incentives, P.U.C.N. Docket So 01-1048 (filed Nov. 19, 2001).

<sup>32</sup> See Order, Filing by Nevada Bell Telephone Company for review and approval of its plan for the reporting and auditing of performance measures and a plan establishing performance incentives, P.U.C.N. Docket No. 01-1048 (iss. August 28, 2001).

<sup>33</sup> See Order, Filing by Nevada Bell Telephone Company for review and approval of its plan for the reporting and auditing of performance measures and a plan establishing performance incentives, Docket No. 01-1048 (iss. May 13, 2002).

<sup>34</sup> In August 2001, the Commission approved all components of Nevada Bell's 2001 PIP, pursuant to a stipulation of the parties, with the exception of the Tier II component. See 2001 Nevada Bell PMP & PIP Order. Subsequently, in May 2002, the Commission approved the Tier II component of Nevada Bell's 2001 PIP, pursuant to a supplemental stipulation of the parties. See Order, Filing by Nevada Bell Telephone Company for review and approval of its plan for the reporting and auditing of performance measures and a plan establishing performance incentives, P.U.C.N. Docket So. 01-1048 (iss. May 13, 2002).

<sup>35</sup> In its original filing, Nevada Bell had also indicated that it would propose to transfer Performance Measures ("PMs") 16 and 17 from Tier I to Tier II, a proposal Nevada Bell subsequently withdrew in connection with the approval of the Tier II Remedy Proposal. See Order, Filing by Nevada Bell Telephone Company for review and approval of its plan for the reporting and auditing of performance measures and a plan establishing performance incentives, P.U.C.N. Docket So 01-1046 (iss. May 13, 2002) (the "Tier II Order").

<sup>36</sup> The changes to the 2002 PMP include changing certain performance Measures ("PMs") standards from "Parity" to "Benchmarks" in PMs 1, 19, and 25. Various changes to the levels of disaggregation, business rules or exclusions are reflected in PMs 2, 3, 5 through 9, 11 through 23, 26, 28, 30 through 35, 37, 38, 40 and 41.

had been proposed by the Petition, as well as other grammatical, editorial, and clarification changes proposed by the Parties," were incorporated in the 2002 PM&IP.

# **111. FRAMEWORK FOR ASSESSING COMPLIANCE WITH SECTION 271**

## **A. Overview of the Section 271**

84. The Act conditions a BOC's entry into the in-region, interLATA market on compliance with certain provisions of Section 271. BOCs must apply to the FCC for authorization to provide interLATA services originating in any in-region state.<sup>38</sup> The FCC must issue a written determination on each application no later than 90 days after receiving such application." Section 271(d)(2)(A) requires the FCC to consult with the Attorney General before making any determination approving or denying a section 271 application."

85. In addition, the FCC must consult with the relevant state commission to verify that the BOC has one or more state-approved interconnection agreements with a facilities-based competitor, or a Statement of Generally Available Terms and Conditions (SGAT), and that either the agreement(s) or general statement satisfies the "competitive checklist."<sup>41</sup> Because the Act does not prescribe any standard for the consideration of a state commission's verification under section 271(d)(2)(B), the FCC exercises its discretion to determine the amount of weight to

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<sup>37</sup> The changes to the 2002 PIP include certain editorial changes such as renumbering the Table of Contents and updating the Tier II portion of the PIP (Section 6) to reflect the 2002 Tier II Remedy Proposal consistent with the Tier II Order. Other changes incorporate certain items erroneously omitted from the January 2002 filing, including the new Sections 2.2 and 2.4, and the new Section 3.3 (No data month is neither compliant nor non-compliant month). The clarification changes include adding a definition of "transaction" at Section 1.2.4, expanding the Small Sample Adjustment Table at Section 3.4.6, expanding the Nevada Bell sample size in Section 4.2, and adding an Exhibit 4 entitled "Tabled values of the Mitigation Formula." Finally, other significant changes include a provision for not paying incentives for 3 months following the introduction of a new measure/submeasure at Section 1.4, a new "no change" condition at Section 1.5, a change to Section 3.4.6 to include rates measurements (PMs 1-13, 5-6, 9a, 10-11, 15-17, 23-24, and deleting PMs 29, 34 and 38), modifying Section 10.3 (Eligibility for incentive payments) to only apply to PM 1, and changing the forecast requirements (Exhibit 2) for collocation and trunks to "may" from "shall."

<sup>38</sup> 47 U.S.C.A. § 271(d)(1).

<sup>39</sup> Id. § 271(d)(3).

<sup>40</sup> The Attorney General is entitled to evaluate the application "using any standard the Attorney General considers appropriate," and the FCC is required to "give substantial weight to the Attorney General's evaluation." Id. § 271(d)(2)(A).

<sup>41</sup> Id. § 271(d)(2)(B).

accord a state commission's verification." Although the FCC will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the FCC's role to determine whether the factual record supports the conclusion that particular requirements of section 271 have been met."

86. Section 271 requires the FCC to make various findings before approving an application. A BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) ("Track A") or 271(c)(1)(B) ("Track B").<sup>44</sup> Then, the BOC must establish that (1) it has "fully implemented the competitive checklist" contained in section 271(c)(2)(B);<sup>45</sup> (2) the requested authorization will be carried out in accordance with the requirements of section 272;<sup>46</sup> and (3) the BOC's entry into the in-region interLATA market is "consistent with the public interest, convenience, and necessity."<sup>47</sup>

87. The BOC bears the burden of proof of compliance with section 271.<sup>48</sup> The applicant must show that it has a concrete and specific legal obligation to furnish each checklist item upon request, pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist items in quantities that competitors may reasonably demand and at an acceptable level of quality." The BOC must, in particular, demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis."

<sup>42</sup> Memorandum Opinion and Order, Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA services in the State of New York, FCC 99-404, CC Docket No. 99-295, ¶ 20 (rel. Dec. 22, 1999) ("Bell Atlantic New York Order"); Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, FCC 97-298, CC Docket No. 97-137, ¶ 30 (rel. Aug. 19, 1997) ("Ameritech Michigan Order"). As the D.C. Circuit has held, "[A]lthough the FCC must consult with the state FCCs, the statute does not require the FCC to give State FCCs' views any particular weight." SBC Communications v. FCC, 138 F.3d 410, 416 (D.C. Cir. 1998).

<sup>43</sup> Ameritech Michigan Order ¶ 30; SBC Communications v. FCC, 138 F.3d at 416-17.

<sup>44</sup> 47 U.S.C.A. § 271(d)(3)(A).

<sup>45</sup> Id. §§ 271(c)(2)(B), 271(d)(3)(A)(i).

<sup>46</sup> Id. §§ 271(d)(3)(B), 272.

<sup>47</sup> 47 U.S.C.A. § 271(d)(3)(C).

<sup>48</sup> See Opinion and Order, Application by SBC Communications Inc., Southwestern Bell Telephone Company, and SBC Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Texas, FCC 00-238, CC Docket No. 00-68, ¶ 46 (rel. June 30, 2000) ("SBC Texas Order").

<sup>49</sup> See Bell Atlantic New York Order ¶ 52.

<sup>50</sup> See 47 U.S.C.A. § 271(c)(2)(B)(i), (ii).

88. For those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in “substantially the same time and manner” as it provides such access to itself.<sup>51</sup> For those functions that have no retail analogue, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier a “meaningful opportunity to compete.”

89. Whether the statutory standard is met is ultimately a judgment the FCC makes based on its expertise in promoting competition in local markets and in telecommunications regulation generally.<sup>53</sup> The FCC has not established, nor does it believe it appropriate to establish, specific objective criteria for what constitutes “substantially the same time and manner” or a “meaningful opportunity to compete.”<sup>54</sup> Whether this legal standard is met can only be decided based on an analysis of specific facts and circumstances.” Therefore, the FCC looks at each application on a case-by-case basis and considers the totality of the circumstances, including the origin and quality of the information in the record, to determine whether the nondiscrimination requirements of the Act are met.<sup>56</sup>

## **B. The relevance of performance measurement data**

90. Performance measurement data provide empirical evidence regarding a BOC’s compliance with individual checklist items. Parity and benchmark standards established by state commissions do not represent absolute maximum or minimum levels of performance necessary to satisfy the competitive checklist.” Rather, these standards can represent informed and reliable attempts to objectively approximate whether CLECs are being served by the ILEC in substantially the same time and manner, or in a way that provides CLECs a meaningful

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<sup>51</sup> SBC Texas Order ¶ 44.

<sup>52</sup> Id.

<sup>53</sup> SBC Texas Order ¶ 46.

<sup>54</sup> Id.

<sup>55</sup> Id.

<sup>56</sup> Id.

<sup>57</sup> Id. ¶ 8.

opportunity to compete:<sup>58</sup> Thus, to the extent there is no statistically significant difference between a BOC's provision of service to competing carriers and its own retail customers, the FCC generally will not look any further." Likewise, if a BOC's provision of service to competing carriers satisfies the performance benchmark, the analysis is usually considered complete."

91. Otherwise, the FCC will examine the evidence further to make a determination whether the statutory nondiscrimination requirements are met." The FCC will examine the explanations that a BOC and others provide about whether the data accurately depict the quality of the BOC's performance.<sup>62</sup> The FCC also may consider (the degree and duration of any performance disparity, and whether performance is improving or deteriorating." Even where statistically significant differences exist, the FCC can conclude that such differences have little or no competitive significance in the marketplace. In such cases, the FCC may conclude that the differences are not meaningful in terms of statutory compliance. Ultimately, the determination of whether a BOC's performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before the FCC.<sup>64</sup>

92. Where there are multiple performance measures associated with a particular checklist item, the FCC considers the performance demonstrated by **all** the measurements as a whole.<sup>65</sup> A disparity in performance for one measure, by itself, generally may not provide a basis for finding noncompliance with the checklist item.<sup>66</sup> Furthermore, the reported performance data can be

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<sup>58</sup> See *SBC Kansas/Oklahoma Order* ¶ 31; *SBC Texas Order* ¶ 55 & n. 102; see also *Appendix F* ¶ 8. This is particularly true where the CLECs have participated in extensive collaborative proceedings dedicated to the development of effective performance measurement and incentive mechanisms. There should be no doubt that the measurement and testing standards developed over many years by the Staff, BCP, CLECs and Nevada Bell reflect Nevada Bell's performance under actual commercial conditions.

<sup>59</sup> *Appendix F* ¶ 8.

<sup>60</sup> *Id.*

<sup>61</sup> *See Dell Atlantic New York Order* ¶ 59; see also *Appendix F* ¶ 8.

<sup>62</sup> *Appendix F* ¶ 8.

<sup>63</sup> See *id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* ¶ 9.

<sup>66</sup> *Id.*



affected by factors beyond a BOC's control, which means that the FCC is less likely to hold the BOC wholly accountable for the disparity."

93. To summarize, the FCC does not use performance measurement data as a substitute for the 14-point competitive checklist.<sup>68</sup> Rather, it uses performance data as valuable evidence that informs its judgment as to whether, based on the totality of the circumstances and available information, a BOC has complied with the checklist requirements.") Although performance measurements add necessary objectivity and predictability to the review, they cannot wholly replace the FCC's (or, for that matter, the Commission's) own judgment as to whether a BOC has complied with the competitive checklist."

**C. Relevance of the prior FCC findings in prior SBC 271 decisions, Pacific Bell's performance data, the California OSS test, and the California Order**

1. Overview of "sameness"

94. The record in this proceeding establishes that Nevada Bell's electronic and manual OSS are the same, under the criteria established by the FCC, as those used by Pacific Bell.<sup>71</sup> Where, as here, the same systems or processes are used region-wide, the FCC has found that performance data and OSS test results from an "anchor" state can be used to supplement commercial performance data from the applicant or "satellite" state or in place of further OSS testing.<sup>72</sup> The California OSS Test results and performance measurement data, therefore, are probative of Nevada Bell's compliance with Section 271.<sup>73</sup>

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<sup>67</sup> Id.

<sup>68</sup> Id. ¶ 10.

<sup>69</sup> See id.

<sup>70</sup> See id.

<sup>71</sup> See Exhibit 107, Direct Testimony of Daniel O. Jacobsen at 8-9 (presenting the "sameness" witnesses and identifying their respective OSS areas) ("Jacobsen Direct Testimony").

<sup>72</sup> See SBC Kansas/Oklahoma Order ¶¶ 36 & 108; Memorandum Opinion and Order, Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks, Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, FCC 01-130, CC Docket No. 01-9 ¶ 48 (rel. April 16, 2001) ("Massachusetts Order").

<sup>73</sup> See SBC Kansas/Oklahoma Order ¶¶ 36 & 108; Massachusetts Order ¶ 48

2. The “sameness” roadmap and standard

95. In the SBC Kansas/Oklahoma Order the **FCC** set forth the “roadmap” whereby “more rural states can conduct successful section 271 reviews without overwhelming their regulatory resources by building on the work of other states in their region.”” The FCC stated:

We agree that findings in the SWBT [Southwestern Bell Telephone] Texas Order may be a relevant factor in our analysis in this proceeding. Where SWBT provides evidence that a particular system reviewed and approved in Texas is also used in Kansas and Oklahoma, our review of the same system in this proceeding will be informed by our findings in the SWBT Texas Order. . . . We also find . . . that SWBT’s actual performance in Texas may be relevant to our analysis of the commercial readiness of SWBT’s OSS in this proceeding. . . .<sup>75</sup>

Since that time, in addition to Arkansas and Missouri (the other states in SWBT’s five-state region), BOCs in 11 states have successfully followed the **FCC’s** “roadmap” and demonstrated “sameness” for all or part of regional OSS.<sup>76</sup>

96. Under the FCC’s analysis, a **BOC** should support its claim of “sameness” through the submission of an “attestation letter and a supplemental report from a third-party consultant.”” The attestation letter and third-party attestation are supplemented and confirmed by affidavits or testimony that the “interfaces, systems and processes” in place in the anchor state are the “same”

<sup>74</sup> SBC Kansas/Oklahoma Order ¶ 110. In the SBC Kansas/Oklahoma Order, the FCC first set forth its standard for determining the relevance of prior proceeding in its review of the OSS used by a BOC:

Under our first inquiry (the analysis of OSS functionality), our earlier conclusions about SWBT’s OSS in Texas are relevant in this proceeding to the extent that SWBT uses the same systems, offering the same functionality, in Kansas and Oklahoma. For example, if we find (as we do below) that the interfaces used for pre-ordering are the same in Kansas, Oklahoma and Texas, then we may consider our findings in the SWBT Texas Order that these interfaces provide the full range of necessary functionality. With respect to our second inquiry (the analysis of commercial readiness), evidence that its OSS is the same across these three states allows us to broaden the scope of our review and look to evidence of SWBT’s performance in Texas.

SBC Kansas/Oklahoma Order ¶ 112; see also Memorandum Opinion and Order, Application by SBC Communications Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region InterLATA Services in Missouri, FCC 01-338, CC 01-194 (rel. Nov. 16, 2001) (“SBC Arkansas/Missouri Order”). These orders “establish a roadmap that can be followed by applicants . . . that seek to rely in part . . . on evidence presented in another application.” Id.

<sup>75</sup> SBC Kansas/Oklahoma Order ¶ 35-36.

<sup>76</sup> These states are Alabama, Georgia, Kentucky, Louisiana, Maine, Mississippi, New Jersey, North Carolina, Rhode Island, South Carolina, and Vermont.

<sup>77</sup> See, e.g., SBC Kansas/Oklahoma Order ¶ 107.

as those used in the satellite slate.” This is exactly what Nevada Bell has done in this proceeding.

3. Nevada Bell and Pacific Bell’s OSS are the “same”

97. Nevada Bell engaged PricewaterhouseCoopers (“PwC”) to attest to Nevada Bell’s Management Assertion that its OSS are the same as those used by Pacific Bell in California. In addition to the PwC Attestation, Nevada Bell provided testimony of witnesses: (i) comparing Nevada Bell’s and Pacific Bell’s systems, business rules, training and manual processes and explaining how the OSS are the “same” in both slates, (ii) discussing how CLECs submit orders to Nevada Bell and Pacific Bell, (iii) comparing the organizational structures related to OSS in both companies, and (iv) describing the scalability of Nevada Bell’s manual processes. PwC and Nevada Bell’s witnesses both reached the same conclusion – that Nevada Bell and Pacific Bell have deployed a regional operation support system (the “Regional OSS”).

a. The PwC attestation<sup>79</sup>

98. Following the roadmap established by the FCC, Nevada Bell engaged PwC to review the OSS processes, systems, and procedures used by Nevada Bell in Nevada to assess whether they are the “same” as those used in California. PwC sought to confirm the assertion of Nevada Bell’s management that:

- the OSS utilized to support competitive local exchange carrier activity in the Pacific Region of SBC Communications, Inc., (which includes both Nevada Bell and Pacific Bell) are the same; or,
- where the OSS is discernibly separate, it nonetheless can be expected to behave the same way in both states; or,
- in terms of the manual components of the OSS, the existence of similarities between the states will produce similar results.<sup>80</sup>

With respect to the non-manual (i.e., electronic) components of the OSS, PwC’s Attestation confirmed the Management Assertion that, with the exception of the four flow-through items

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Id.

<sup>79</sup> The PwC Attestation was performed in accordance with the Attestation Standards of the American Institute of Certified Public Accountants (“AICPA”) See Article IV, AICPA Code of Professional Conduct. An attestation examination is the highest level of assurance that can be provided on a written assertion, and represents the equivalent of an audit opinion with respect of financial statements.

<sup>80</sup> See Exhibit 138, Joint Testimony of Theodore V. Schaefer and James J. Murphy on Behalf of PricewaterhouseCoopers LLP Appendix “I”, (“Schaefer/Murphy Direct Testimony”).

specified by management," Nevada Bell and Pacific Bell are "served by the same OSS" or "served by discernibly separate OSS that are identical or behave the same." With respect to the manual components of the OSS, PwC's Attestation confirmed the Management Assertion that the similarities between the states will produce similar results."

99. In order to reach these conclusions, a total of eight PwC professionals spent over 1,300 hours conducting a comprehensive and thorough evaluation of both electronic and manual components of Nevada Bell's OSS.<sup>84</sup> PwC selected individuals whose prior telecommunications experience gave them extensive knowledge of the telecommunications industry in general, and Nevada Bell/Pacific Bell OSS in particular.<sup>85</sup>

100. After assembling the project team, PwC reviewed Pacific Bell's systems and processes to create a "base case". PwC-created flow-diagrams, narratives, and matrixes describing the various processes and systems for each of the five functional areas of OSS: Preordering, Ordering, Provisioning, Maintenance, and Billing." PwC conducted the same review of the Nevada Bell OSS, creating similar flow diagrams, narratives, and matrixes. PwC then compared Nevada Bell to the base case and identified the discrepancies, if any.

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<sup>81</sup> The four flow-through items, which were accepted by management, are orders for (1) Resale Conversions "As Is/With Changes"; (2) Certain Resale Services; (3) 5db Loop Conversions "As Specific"; and, (4) "New Connects" For DS1 Loops. See Exhibit 138, Schaefer/Murphy Direct Testimony, Appendix "I", Attachment "A". These differences "occurred during a time when Nevada Bell and Pacific Bell were individually prioritizing flow through, based upon the services with the actual or expected highest order volumes." Exhibit 120, Supplemental Direct Testimony of Stephen D. Huston and Adoption and Supplemental Direct Testimony of Beth Lawson at 17-18 ("Huston/Lawson Supplemental Direct"). That is no longer the case. Id. In addition, change requests were submitted to correct certain flow through differences. Id.

<sup>82</sup> Exhibit 138, Schaefer/Murphy Direct Testimony at 9.

<sup>83</sup> See Exhibit 139, Rebuttal Testimony of Theodore V. Schaefer and James J. Murphy on Behalf of PricewaterhouseCoopers LLP at 4 (Manual processes are functionally equivalent such that they will produce similar results) ("Schaefer/Murphy Rebuttal Testimony"). This assessment included PwC's identification of 12 variances in certain manual processes between Nevada Bell and Pacific Bell. Id. at 32-40. These variances typically evolved from a locally created process designed to meet the special requirements of the operations in Nevada. For each variance, PwC confirmed that CLECs in both states received functionally equivalent outcomes.

<sup>84</sup> Exhibit 138, Schaefer/Murphy Direct Testimony at 7-8. These professionals consisted of two PwC partners who lead the engagement, one senior manager who was the team leader overseeing the project's day-to-day operations, and five team members, consisting of three senior associates and two associates, who performed the fieldwork in Nevada and California. Exhibit 139, Schaefer/Murphy Rebuttal Testimony at 16-18.

<sup>85</sup> Id. at 17-19.

<sup>86</sup> Id. at 22.

(1) PwC's base case review

101. The base case review, involved a two-step process. The first step required PwC to conduct a Process Review for each of the five OSS functional areas.<sup>87</sup> The Process Review encompassed a review of project documentation, meetings with representatives from both Pacific Bell and Nevada Bell to identify necessary interview subjects and locations, a review of the methods and procedures for and interviews of subject matter experts within each functional area, site visits to various work centers, and confirmation of the accuracy of all process flow diagrams through follow up interview with work center subject matter experts.

102. The second step of the base case review process required PwC to conduct a Systems Review for each of the five OSS functional areas.<sup>88</sup> The Systems Review included the creation of a system inventory, review of documentation describing systems architecture and data flow, interviews of subject matter experts and/or observations of each system, documentation of specific instances and associated system versions, creation of system flow diagrams, site visits to work centers to view transactions being processed, observation of live data test transactions, and confirmation of system data flow and definition accuracy through follow up interviews."

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<sup>87</sup> Exhibit 139, Schaefer/Murphy Rebuttal Testimony at 23-25. PwC reviewed 34 different systems, including, AOG (Automated Order Generator), APTOS (Automation Pricing Terminal Options & Support), BOSS (Billing and Order Support System), CABS (Carrier Access Billing System), CESAR (Customer Enhanced System for Access Requests), CRIS (Customer Record Information System), DataGate, EBTA (Electronic Bonding Trouble Administration), EDI (Electronic Data Interchange), EDI/CORBA (Electronic Data Interchange/Common Object Request Broker Architecture), LASR (Local Access Service Request), LEX (Local Service Request Exchange), LFACS (Loop Facilities Assignment Control System), LMOS (Loop Management Operations System), PREMIS (Premises Information System), SOAC (Service Order Control System), SORD (Service Order Retrieval and Distribution), TBTA (Toolbar Trouble Administration), TIRKS (Trunk Integrated Records Keeping System), Verigate, and WFA (Work Force Administration and Control). See Exhibit 138, Schaefer/Murphy Direct Testimony, Attachment F.

<sup>88</sup> The same 34 systems subject to the Process Review were also included in the System Review. See id.

<sup>89</sup> PwC provided an example of the of system flow diagrams with their direct testimony. See Exhibit 138, Schaefer/Murphy Direct Testimony, Attachment G.

<sup>90</sup> Exhibit 139, Schaefer/Murphy Rebuttal Testimony at 26-28.

(2) PwC's transaction review

103. In addition to the base case review, described above, PwC conducted a Transaction Review, essentially a “transaction walk through testing” process,” which entailed monitoring the flow of actual orders through each step of the OSS, serving to confirm the base case review.<sup>92</sup> The scope of the Transaction Review encompassed eight product types specially selected because they represented 99.97 percent of installed base of Nevada Bell's resale and wholesale base at the time of the review.’’ For each product type, PwC reviewed the following transactions: New Orders, Change Orders, Cancelled Orders, Order Completion, Closed Trouble Reports, and Dispute Claim Initiation Through Closure.<sup>94</sup> Through the Transaction Review, PwC was able trace an order through each system to validate that the system flow-through actually occurred as documented by the base case review.”

b. Nevada Bell's OSS Witnesses

104. Again following the FCC's roadmap, Nevada Bell supplemented PwC's independent third-party attestation with testimony of witnesses describing how the “interfaces, systems and processes” in place in the anchor state are the “same” as those used in the satellite state. Nevada Bell witnesses described the Nevada Bell/Pacific Bell Local Operations Center (“LOC”), Local Service Center (“LSC”), Network Operations, Pre-ordering and Ordering Systems, and Wholesale Billing. Collectively, these witnesses: (i) described the electronic and/or manual OSS available in the Nevada Bell/Pacific Bell Region, (ii) provided a comparison

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<sup>91</sup> Id. at 28-29.

<sup>92</sup> Id. at 28.

<sup>93</sup> Exhibit 138, Schaefer/Murphy Direct Testimony at 13. These product types are as follows:

- Resale Residential POTS
- Resale Business POTS
- Resale CENTREX
- UNE – Basic Loop
- UNE – xDSL
- UNE DSI
- LNP Port Outs
- Interconnection Trunks

Id. at 13-14.

<sup>94</sup> Id. at 14

<sup>95</sup> Exhibit 139, Schaefer/Murphy Rebuttal Testimony at 28

of Nevada Bell's and Pacific Bell's systems, business rules, training and manual processes including an explanation of the ways in which the OSS are the "same" in both states. (iii) discussed how CLECs submit orders, (iv) compared the organizational structures related to OSS, and (v) described the scalability of manual processes."

c. The Staffs review and assessment of PwC's attestation and workpapers

105. As further confirmation of the sufficiency of the PwC Attestation, Staff and its consultants conducted their own independent review of electronic and paper records that PwC had compiled during the Attestation." Following its thorough examination of the PwC workpapers, Staff concluded, "the work performed by PwC was well organized and adequately documented." and agreed, "that the documentation supports the wording of the attestation."<sup>98</sup> Staff did, however, raise concerns regarding (i) the scope of the review and the degree to which the attestation could extend to wholesale products that have not yet been ordered in Nevada, and (ii) the "sameness" standard under which PwC had conducted its review.<sup>99</sup>

d. Discussion and analysis

106. With respect to the scope and applicability of the PwC Attestation, PwC responded to Staffs concern that the PwC Attestation failed to indicate whether it "extends to transactions involving trouble report initiation, trouble report status queries, trouble report history inquiries, service disconnects, directory service requests, migration or supplemental

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<sup>96</sup> See Exhibit 124, Supplemental Joint Direct Testimony of Ginger L. Henry and Kris A. Wells (demonstrating the means by which Pacific Bell and Nevada Bell ensure that the personnel involved in providing pre-ordering, ordering, and billing services to CLECs in Nevada will do their jobs in the same manner as those in California) ("Henry/Wells Supplemental Joint Direct"); Exhibit 128, Adoption and Supplemental Direct Testimony of David R. Smith (demonstrating that the work of the LOC in providing installation and maintenance services for CLECs in California and Nevada is performed using the same processes, procedures, training and systems in both states); Exhibit 131, Direct Testimony of Rick Resnick (demonstrating the means by which Pacific Bell and Nevada Bell ensure that the personnel involved in performing the provision, maintenance and repair of orders by CLECs in Nevada will do their jobs in the same manner as those in California); Exhibit 135, Direct Testimony of Michael E. Flynn (explaining how Nevada Bell and Pacific Bell utilize the same systems, processes and employees to manage, monitor and maintain the regional billing system); Exhibit 120, Supplemental Testimony of Stephen D. Huston and Adoption and Supplemental Testimony of Beth Lawson (demonstrating that electronic systems and procedures used to process CLEC service requests for end users located in Nevada and California are the same).

<sup>97</sup> See Exhibit 150, Burdette Supplemental at 2

<sup>98</sup> Exhibit 150, Burdette Supplemental at 2.

<sup>99</sup> See Exhibit 151, Prepared Testimony of Richard Cahe, at 10-11 ("Cahe Testimony")

orders, service suspension and restoration.'" PwC expressly confirmed that its attestation did extend into each of these transactions, as documented in its workpapers.<sup>101</sup>

107. Nevada Bell responded to Staff's concern that the PwC's Transaction Review was somehow "limited" because it relied on products representing 99.97 percent of Nevada's installed base but only 82.98 percent of that in California.<sup>102</sup> With respect to the Preordering and Ordering functions, Nevada Bell explained that there is "only one Verigate, one DataGate, one CORBA, one LEX, one EDI (pre-ordering and ordering) -- and the same interfaces used by CLECs to submit pre-ordering transactions and LSRs in Nevada are used by CLECs in California."'" .Accordingly, CLECs in both states use the "same systems for pre-ordering and ordering of all UNE products, including but not limited to, UNE-P, HFPL-UNE, and xDSL<sup>104</sup> UNE."<sup>105</sup> With respect to the Provisioning, Maintenance, and Billing functions, Nevada Bell explained all the processes, procedures and systems used by Nevada Bell are the same as those used by Pacific Bell.<sup>106</sup>

108. With respect to the "sameness" standard, Staff agreed that PwC had employed the proper standard to the extent that it concluded that Nevada Bell and Pacific Bell are "served by the same OSS" or "served by discernibly separate OSS that are identical or behave the same."<sup>107</sup> As PwC explained, this standard governed its review of all electronic components of the Nevada Bell/Pacific Bell OSS.<sup>108</sup> Staff's concern, therefore, extends only to the "sameness" standard

<sup>100</sup> See id. at 13.

<sup>101</sup> Exhibit 139, Schaefer/Murphy Rebuttal 1 testimony at 29-30.

<sup>102</sup> Cabe Testimony at 16.

<sup>103</sup> See Exhibit 122, Supplemental Rebuttal Testimony of Stephen D. Huston and Beth Lawson at 4 ("Huston Lawson Supplemental Rebuttal Testimony").

<sup>104</sup> "xDSL" is a generic term for "digital subscriber line," which spans various transmission speeds from 128 kilobits per second (kbps) to as high as 52 megabits per second (mbps).

<sup>105</sup> Haron Lawson Supplemental Rebuttal Testimony at 4 n. 5 (emphasis added).

<sup>106</sup> See Exhibit 134, Supplemental Rebuttal Testimony of Rick Resnick at 6 (Provisioning and Maintenance & Repair) ("Resnick Supplemental Rebuttal"); see Exhibit 135, Direct Testimony of Michael E. Flynn at 9 (Billing) ("Flynn Direct").

<sup>107</sup> Exhibit 151, Cabe Testimony at 13.

<sup>108</sup> Schaefer/Murphy Rebuttal at 3 & 5.



that PwC applied to manual functions – "in terms of the manual components of the OSS, the existence of similarities between the states will produce similar results."<sup>109</sup>

109. Here, Staff suggested that Nevada Bell should demonstrate that the manual processes will achieve equivalent performance results with California." Such a hurdle defeats the purpose of the sameness showing, which is to allow a satellite state to rely on data from an anchor state in areas where the satellite state has experienced few or no commercial orders" Staff's standard would require Nevada Bell to show that its performance results are the same as California. In this regard, Staff stated that "[s]ince the purpose of the effort is to supplement evidence because of the lack of robust activity in Nevada, it is not appropriate to define the scope of review by reference to present competitive activity in Nevada." This would have Nevada Bell attempt to perform the task of comparing commercial performance in areas where its performance data are otherwise insufficient (because of low volumes) with corresponding performance data from California.

110. More importantly, this concern regarding the sameness standard that was applied to the manual Components of the OSS review is not an issue that this Commission can or should ultimately resolve. **As** the Commission has previously held in this proceeding, it will not "try to predict an FCC outcome" by attempting to reach conclusive determinations regarding the application of federal legal standards. Rather, the Commission's role is to "undertake the initial analysis and develop a record[,] and permit the FCC to examine the record and exercise its authority under the Act." In this regard, no one can argue that this record is insufficient.

<sup>109</sup> See Exhibit 138, Schaefer/Murphy Direct, Appendix "I

<sup>110</sup> Exhibit 151, Cabe Testimony at 10.

<sup>111</sup> Id. at 15.

<sup>112</sup> Exhibit 151, Cabe Testimony at 16.

<sup>113</sup> Order Denying Motion to Dismiss, Petition for review and approval of the draft application by SBC Communications, Inc., Nevada Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Nevada Bell Long Distance, for provision of in-region interLATA services in Nevada, Docket No. 00-7031 (iss. Nov. 7, 2000) ("The Commission finds that there is a public interest in fostering the development of long-distance competition, as well as facilitating the promotion of the local service market in this state, by continuing to pursue the analysis of whether or not Nevada Bell has satisfied all of the requirements of Section 271 of the Act. It is not the Commission's role to try to predict an FCC outcome. Instead, it is the Commission's responsibility to undertake the initial analysis and develop a record, and permit the FCC to examine the record and exercise its authority under the Act.").

Staff has conceded that the PwC Attestation shows exactly what Nevada Bell requested, and that its conclusions are well supported and adequately documented.'''

e. Conclusion

111. In conclusion, Nevada Bell has demonstrated that its electronic and manual OSS are the same as those used by Pacific Bell – following the *roadmap* and using the *criteria* established by the FCC. Therefore, the OSS either is the same or can be reasonably expected to perform the same in both states. Nevada Bell has also demonstrated that its electronic and manual OSS are scalable to process foreseeable increases in volumes. The Commission can rely on the conclusions and findings of the FCC and the California Commission to support its finding that Nevada Bell provides nondiscriminatory access to OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing, and that Nevada Bell's OSS are operationally ready to handle current demand and reasonably foreseeable future volumes.

**IV. NEVADA BELL IS ELIGIBLE TO SEEK INTERLATA RELIEF UNDER SECTION 271(C)(1)(A)**

112. Nevada Bell must demonstrate to the FCC that it satisfies the requirements of Track A.<sup>115</sup> To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service to residential and business subscribers."'' The **Act** states "such telephone service may be offered either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."'' The FCC concluded in the Ameritech Michigan Order that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers.<sup>118</sup>

<sup>114</sup> Exhibit 150, Burdette Supplemental at 2

<sup>115</sup> See 47 U.S.C.A. § 271(d)(3)(A).

<sup>116</sup> Id. § 271(c)(1)(A).

<sup>117</sup> Id.

<sup>118</sup> See Ameritech Michigan Order ¶ 82

113. Nevada Bell has made this showing. The Company's witnesses identified interconnection agreements with two facilities-based carriers, WorldCom and ATG, who provide primarily facilities-based, as well as resale service, to business subscribers.'" Nevada Bell also has interconnection agreements with several other competing providers who serve residential subscribers by reselling Nevada Bell's telecommunications services.<sup>120</sup> The Commission believes this mix of carriers satisfies the requirements of Track **A**.

114. The FCC's 271 orders provide guidance on the proper application of Track **A**. Read together with the Ameritech Michigan Order, the Second BellSouth Louisiana Order makes it clear that Nevada Bell can rely on a mix of facilities-based and resale carriers to satisfy Track **A**.<sup>121</sup> In the Ameritech Michigan Order, the FCC held that a BOC may rely on more than one competitive carrier, (i.e., a mix of carriers) to satisfy Track A's requirement (that competing carriers must provide "telephone exchange service to residential and business subscribers."'"

115. To "provide guidance for future 271 applications,"'" the FCC specifically concluded (that "when a BOC relies upon more than one competing provider to satisfy section 271(c)(1)(A), each such carrier need not provide service to both residential and business customers."<sup>124</sup> The Ameritech Michigan Order thus makes it clear that a BOC may, as Nevada Bell does, rely on a mix of competing carriers to satisfy the requirements of Track **A**. That ATG and WorldCom claim that they do not serve residential subscribers, similarly, does not justify a recommendation of noncompliance,

116. The Second BellSouth Louisiana Order provides additional guidance on the proper application of Track **A**. In BellSouth's second application for authority to originate interLATA services in Louisiana, BellSouth contended. "at least six wireline [competitive LECs]

<sup>119</sup> Exhibit 9, Bush Direct Testimony ¶¶ 24-30.

<sup>120</sup> Id. ¶ 31 & Table 4

<sup>121</sup> Memorandum Opinion and Order. Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, FCC 98-271, CC Docket No. 98-121 (rel. October 13, 1998) ("Second BellSouth Louisiana Order")

<sup>122</sup> Ameritech Michigan Order Id. ¶ 80 (quoting 17 U.S.C.A. § 271(c)(1)(A)).

<sup>123</sup> Id. ¶ 82 n. 184.

<sup>124</sup> Id. ¶ 82

currently provide facilities-based local telephone service in Louisiana."<sup>125</sup> BellSouth asserted that only one carrier, KMC, provided facilities-based service to residential subscribers."<sup>126</sup> KMC claimed that it "did not provide facilities-based service to any residential customer in Louisiana."<sup>127</sup> Rather, KMC stated that it "serves all of its residential customers using BellSouth's resold local exchange service."<sup>128</sup>

117. Against this factual background, the FCC analyzed whether BellSouth satisfied Track A. After concluding, "the language of section 271(c)(1)(A) is ambiguous on its face,"<sup>129</sup> the FCC canvassed the legislative history of the Act."<sup>130</sup> The FCC's survey of legislative history included consideration of the portions of the Conference and House Reports cited by the Competing Providers in their efforts to dismiss the petition."<sup>131</sup> The FCC then concluded:

Although this language is illustrative of the type of competition Congress thought possible, the language of section 271(c)(1)(A) appears to stop short of mandating actual provisioning of competitive facilities-based telephone exchange services independently to both business and residential subscribers."<sup>132</sup>

The FCC all but specifically rejected the interpretation of Track A that the Competing Carriers asked the Commission to adopt. In Paragraph 48 of the Second BellSouth Louisiana Order, the FCC explained that "reading the statutory language to require that there must be facilities-based service to both classes of subscribers to meet Track A could produce anomalous results, and there appear to be overriding policy considerations that lead to a contrary construction of the statutory language."<sup>133</sup> The FCC went on to state that "if all other requirements of section 271 have been satisfied, it does not appear to be consistent with congressional intent to exclude a

<sup>125</sup> Second BellSouth Louisiana Order, ¶ 45

<sup>126</sup> Id.

<sup>127</sup> Id.

<sup>128</sup> Id. ¶ 47

<sup>129</sup> Id. ¶ 46

<sup>130</sup> See id.

<sup>131</sup> Compare, e.g., id. ¶ 46 (citing H.R. Conf. No. 104-458, at 147-48 & H.K. Rep. No. 104-204, at 77) with ATG, PAC-West and WorldCom's Motion to Dismiss Application at 3 n.3 (filed October 3, 2000) (citing H.R. Conf. No. 104-458, at 148 & H.R. Rep. No. 104-204, at 77).

<sup>132</sup> Second BellSouth Louisiana Order ¶ 47 (emphases added).

<sup>133</sup> Id. ¶ 48

BOC from the in-region, interLATA market solely because the competitors' service to residential customers is **wholly** through resale."'''

118. The Commission has fulfilled its charge under Section 271. **As** the Commission has recognized, its task is to develop the facts, not resolve issues of first impression under federal telecommunications law.<sup>135</sup> The factual record is clear. **As** of November 2000, WorldCom and ATG provided facilities-based service to business customers. Other carriers provided resale service to residential customers. The FCC must decide whether these facts satisfy the requirements of Track A

## **V. NEVADA BELL HAS FULLY IMPLEMENTED THE COMPETITIVE CHECKLIST**

### **A. Checklist Item 1 -- Interconnection**

#### 1. Overview

119. The Company provides interconnection to competitive providers in accordance with the requirements of the Act. Nevada Bell provides interconnection for the transmission and routing of telephone exchange and exchange access services pursuant to interconnection agreements approved by the Commission. Those agreements allow CLECs to interconnect at any *technically feasible point within Nevada Bell's network*. When CLECs interconnect with Nevada Bell, they receive service that is at least equal in quality as that Nevada Bell provides to itself. Finally, the rates, terms and conditions offered by Nevada Bell are just, reasonable and nondiscriminatory.

120. Witnesses testifying on behalf of Staff and BCP corroborated the testimony of Nevada Bell's witnesses, stating that Nevada Bell allows competitive providers to interconnect at

<sup>134</sup> Id. (emphases added).

<sup>135</sup> Order Denying Motion to Dismiss. In re petition for review and approval of the draft application by SBC Communications, Inc., Nevada Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Nevada Bell Long Distance, for provision of in-region interLATA services in Nevada, Docket No. 00-7031 (iss. Nov. 7, 2000) ("It is not the Commission's role to try to predict an FCC outcome. Instead, it is the Commission's responsibility to undertake the initial analysis and develop a record, and permit the FCC to examine the record and exercise its authority under the Act.").